

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of:)	
)	
Liberty Cablevision of Puerto Rico, Ltd.)	
)	CSR-7015-E, 7016-E, 7017-E, 7018-E,
Petition for Determination of Effective)	7019-E, 7020-E, 7021-E, 7022-E, 7023-E
Competition in Seven Local Franchise Areas in)	
the Commonwealth of Puerto Rico)	

MEMORANDUM OPINION AND ORDER

Adopted: October 26, 2006

Released: October 27, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers a Petition for Special Relief (“Petition”) that the cable operator Liberty Cablevision of Puerto Rico, Ltd. (“Liberty”), filed with the Commission pursuant to Sections 76.7, 76.905, and 76.907 of the Commission’s rules.¹ The Petition seeks a determination that, in seven franchise areas in the Commonwealth of Puerto Rico,² Liberty is subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended (“Communications Act”),³ and is therefore exempt from cable rate regulation. No opposition to the Petition was filed. Finding that Liberty is subject to effective competition in the seven franchise areas, we grant the Petition.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 623(l)(1) of the Communications Act⁵

¹ 47 C.F.R. §§ 76.7, 76.905, 76.907. Liberty filed a Motion for Expedited Treatment of Petition for Special Relief (“Motion”). Because we are releasing this Memorandum Opinion and Order, we need not act on the Motion.

² In Exhibit 1 to its Petition, Liberty numbers the franchise areas 1 through 7 and lists the “Franchise ID” of each one and the communities it contains. They are as follows: #1, Franchise ID FC-27 (Aguas Buenas, Aibonito, Barranquitas, Cayey, Cidra, Comerio, Naranjito); #2, Franchise ID FC-38 (Dorado, Vega Alta, Vega Baja, Manati); #3, Franchise ID FC-39 (Fajardo, Luquillo, Ceiba, Rio Grande, Canovanas, Loiza, Naguabo); #4, Franchise ID FC-41 (Arecibo, Camuy, Hatillo, Barceloneta); #5, Franchise ID FC-59 (Caguas, Gurabo, San Lorenzo, Humacao, Juncos, Las Piedras, Yabucoa); #6, Franchise ID FC-74 (San Sebastian, Utuado, Lares); #7, Franchise ID FC-75 (Ciales, Florida, Corozal, Morovis, Orocovis). We assigned the Petition nine file numbers because the seven franchise areas in question encompass nine systems each of which has an FCC Physical System Identification Number.

³ 47 U.S.C. § 543(a)(2).

⁴ 47 C.F.R. § 76.906.

⁵ 47 U.S.C. § 543(l)(1).

and Section 76.905 of the Commission's rules.⁶ A cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that it does exist in its franchise area.⁷

II. DISCUSSION

A. Low Penetration Effective Competition

3. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system."⁸ Liberty provided information showing that fewer than 30 percent of the households within the five franchise areas listed in Attachment A subscribe to its cable service. Based on this record, we conclude that Liberty has demonstrated the existence of low penetration effective competition under our rules in those five franchise areas.

B. Competing Provider Effective Competition

4. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition in a franchise area if the area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPDs") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁹

5. In its Petition, Liberty claims the presence of effective competition stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and the DISH Network.¹⁰ Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.¹¹ Liberty has also provided evidence that the DBS providers' service is available in Puerto Rico.¹² Moreover, the two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the third largest, MVPD provider.¹³ With respect to the issue of program

⁶ 47 C.F.R. § 76.905(b).

⁷ See 47 C.F.R. §§ 76.906, 76.907(b).

⁸ 47 U.S.C. § 543(l)(1)(A).

⁹ 47 U.S.C. § 543(l)(1)(B).

¹⁰ Petition at 6-9.

¹¹ *Mediacom Southeast, LLC*, DA 06-776 at ¶ 3 (rel. April 4, 2006).

¹² Petition, Exhibits 3 (evidence that signals from DISH Network's satellites reach Puerto Rico), 4 (evidence that DIRECTV's service reaches Puerto Rico; DIRECTV promotional material directed at Puerto Rico), 5 (DISH Network promotional material directed at Puerto Rico and lists of stores where DISH Network equipment is available).

¹³ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because, in the four franchise areas in question, the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.¹⁴ We find that Liberty has demonstrated that the four franchise areas are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the four franchise areas. Liberty has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in those areas, that there exist no regulatory, technical, or other impediments to households within the areas taking the services of the DBS providers, and that potential subscribers in the areas have been made reasonably aware of the MVPD services of DirecTV and DISH.¹⁵ Therefore, the first prong of the competing provider test is satisfied for each of the four franchise areas in question.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Liberty states, and we have no cause to doubt, that it is the largest MVPD in the four franchise areas where it claims to be subject to competing provider effective competition.¹⁶ To make the numerical showing required by the second prong, Liberty furnished us with Effective Competition Tracking Reports from the Satellite Broadcasting and Communications Association.¹⁷ Based upon the DBS subscriber penetration levels as reflected in Attachment B, calculated using 2000 Census household data, we find that Liberty has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the four franchise areas listed in Attachment B.¹⁸ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Liberty has submitted sufficient evidence demonstrating that its cable systems serving the four franchise areas listed in Attachment B are subject to competing provider effective competition.

¹⁴ 47 C.F.R. § 76.905(g); Petition, Exhibit 7.

¹⁵ See citations to Petition and Exhibits in nn.12 & 14, *supra*.

¹⁶ Petition at 10.

¹⁷ *Id.* at 10 & Exhibit 6.

¹⁸ *Id.*, Exhibit 1 (asserting that over 15% of households subscribe to DBS service in all seven Liberty franchise areas in Puerto Rico).

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the Petition for Special Relief filed by Liberty Cablevision of Puerto Rico, Ltd., for a determination of effective competition in the franchise areas listed in Attachments A and B **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Liberty in the franchise areas listed in Attachments A and B **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁹ 47 C.F.R. § 0.283.

Attachment A

Liberty Cablevision of Puerto Rico, Ltd.

Low Penetration Effective Competition

Franchise Area	Communities	Cable Subscribership	2000 Census Households*	Cable Subscribers*
#1, FC-27	Aguas Buenas Aibonito Barranquitas Cayey Cidra Comerio Naranjito	11.4%	70392	8050
#4, FC-41	Arecibo Camuy Hatillo Barceloneta	29.9%	65895	19730
#5, FC-59	Caguas Gurabo San Lorenzo Humacao Juncos Las Piedras Yabucoa	23.0%	126429	29079
#6, FC-74	San Sebastián Utua Lares	12.2%	37151	4539
#7, FC-75	Ciales Florida Corozal Morovis Orocovis	19.8%	37157	7368

Attachment B

Liberty Cablevision of Puerto Rico, Ltd.

Competing Provider Effective Competition

Franchise Area	Communities	CPR+	2000 Census Households*	DBS Subscribers*
#2, FC-38	Dorado Vega Alta Vega Baja Manati	21.6%	57805	12506
#3, FC-39	Fajardo Luquillo Ceiba Rio Grande Canovanas Loiza Naguabo	18.0%	73844	13328
#4, FC-41	Arecibo Camuy Hatillo Barceloneta	18.4%	65895	12156
#5, FC-59	Caguas Gurabo San Lorenzo Humacao Juncos Las Piedras Yabucoa	21.2%	126429	26797

* = See Cable Operator Petition

+ CPR = Percent DBS penetration